

NO PROTECT
Release copies to [redacted]

Date [redacted]

Surnames [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

EIN: [redacted]

Dear Applicant:

This refers to your application for recognition of exemption from federal income tax as an organization described in section 501(c)(27) of the Internal Revenue Code.

Facts:

You were established by trust indenture on [redacted], by the [redacted] a section 501(c)(6) organization. Your Trustees are executive representatives of [redacted].

You state that you were organized pursuant to authority set out in section 34-9-150 of the [redacted], hereafter [redacted]. [redacted] provides for a mechanism whereby trade and professional associations as well as groups of municipalities, counties, school boards and hospital authorities may extend workers' compensation benefits to their employees through group self-insurance programs. These programs are to enable the members to reduce workers compensation costs by actively promoting safety and thereby resulting in a reduction in the cost of workers compensation.

However, pursuant to [redacted] [redacted] known [redacted] to provide for the continuation of workers' compensation benefits upon the insolvency of a self-insured fund. It appears that the participants of the workers' compensation self-insurance funds created pursuant to [redacted] including you, are not participants in [redacted].

You state that you are associated with [redacted] and that all of your members are members in good standing of [redacted]. You state that [redacted] is a membership organization composed of general contractors, subcontractors, suppliers, and related industries. You indicate that you were designed to provide workers'

[REDACTED]

compensation insurance to contractors who have a difficult time obtaining such coverage.

You state that [REDACTED] appointed your first governing board, and thereafter all of your Trustees are appointed by the Board of Directors. You state that you lease office space, personnel, equipment, etc. from [REDACTED]. Further, you represent that [REDACTED] provides operational support to you, and that such support covers the salary to the Executive Director, postage, equipment rental, utilities, etc. You indicate that the annual cost for such services in [REDACTED] was \$[REDACTED].

You state that you received approval from the [REDACTED] authority to pool the members' workers' compensation liabilities. Further, you state that you are registered with the [REDACTED] as a group self-insured workers' compensation fund.

Moreover, you state that the Commissioner must either approve (1) all your new members, or (2) the underwriting criteria used by you to approve new members. Also, you state that your Trustees are approved by both the Commissioner and by your members.

The information furnished shows that you may only issue coverage to qualifying members of [REDACTED], and that such members must commit to various loss protection activities, otherwise the members may be removed from participation in your plan. Members make contributions to the trust to satisfy workers' compensation claims against members.

You indicate that you obtain excess and aggregate coverage with third party insurance companies. Further, you state that, pursuant to [REDACTED], each of your members is jointly and severally liable for your obligations. It is represented that you are not an insurance company under [REDACTED].

You represent that your sole purpose is not to make a profit but to provide affordable workers' compensation insurance to your members. Your trust indenture authorizes you to return excess contributions to your members. You state that you returned \$[REDACTED] to members in [REDACTED].

Further, you state that the majority of receipts received by you represent contributions from your members to satisfy anticipated workers' compensation claims. Also, you state that you manage and invest the monies received from your members.

[REDACTED]

You represent that you will pay workers compensation claims up to a certain amount, and that claims above this amount are satisfied through a stop-loss policy with a third-party insurer.

Law:

Section 501(c)(27) of the Code was enacted pursuant to section 342 of the Health Insurance and Portability Act of 1996 (Public Law 104-191) dated August 21, 1996. The Conference Agreement, under which section 342 of the Act creating section 501(c)(27) of the Code was adopted, provides for:

"tax-exempt status to any membership organization established by the State prior to June 1, 1996, exclusively to reimburse its members for workers' compensation insurance losses, and that satisfies other conditions:

(i) a State must require that membership of the organization consist of all persons who issue insurance covering workers' compensation losses in such State, and all persons and government entities who self-insure against such losses.

(ii) the organization must operate as a non-profit organization by returning surplus income to members or to workers' compensation policyholders on a periodic basis and by reducing initial premiums in anticipation of investment income."

Section 501(c)(27)(A) of the Code, as amended by Public Law 105-34 dated August 5, 1997, recognizes as exempt:

" Any membership organization if-

(i) Such organization is established before June 1, 1996, by a State exclusively to reimburse its members for losses arising under workmen's compensation acts,

(ii) Such State requires that the membership of such organization consist of-

- (I) all persons who issue insurance covering workmen's compensation losses in such State, and
- (II) all persons and governmental entities who self-insure against such losses, and

[REDACTED]

(iii) Such organization operates as a nonprofit organization by-

(I) returning surplus income to its members or workmen's compensation policyholders on a periodic basis, and

(II) reducing initial premiums in anticipation of investment income.

The Conference Agreement with respect to Section 501(c)(27)(B) of the Code that was added by Public Law 105-34 dated August 5, 1997, states that:

"the bill clarifies tax exempt status of any organization that is created by State law and organized and operated to provide workers' compensation insurance and related coverage incidental to workers' compensation insurance (such coverage includes liability under Federal workers' compensation laws such as the Jones Act, and the Longshore and Harbor Workers' Compensation Act), and that meet certain additional requirements:

(i) the workers' compensation insurance must be required by State law, or be insurance with which State law provides disincentives if not purchased by employers.

(ii) the organization must provide workers' compensation to any employer in the State (for employees in the State or temporarily assigned out-of-State) seeking such insurance.

(iii) the State must extend its full faith and credit to the initial debt of the organization or by providing the initial operating capital of such organization.

(iv) the assets of the organization must revert to the State on dissolution or State law must not permit the dissolution of the organization, absent an act of the State legislature. Should dissolution of the organization become permissible under State law, the assets of the organization must revert to the State on dissolution.

[REDACTED]

(v) the majority of the board of directors of the organization must be appointed by an official of the executive branch of the State, or by the State legislature, or both.

Section 501(c)(27)(B) of the Code as added by Public Law 105-34 dated August 5, 1997, recognizes as exempt:

Any organization (including a mutual insurance company) if-

(i) such organization is created by State law and is organized and operated under State law exclusively to-

(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and
(II) provide related coverage which is incidental to workmen's compensation insurance,

(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-state) which seeks such insurance and meets other reasonable requirements relating thereto,

(iii)(I) the State makes a financial commitment to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or both.

Rationale/Conclusion:

Section 501(c)(27)(A):

Because you were not established by State law like SIGTF, we conclude that you do not meet the requirements of section 501(c)(27)(A)(i) of the Code.

Because all of your members are members in good standing of [REDACTED], and because [REDACTED] is a membership organization, which is composed of general contractors, subcontractors, suppliers, and

[REDACTED]

related industries; and because your membership is not open to all persons who issue insurance covering workers' compensation losses in [REDACTED], and all persons and government entities who self-insure against such losses, we conclude that you do not meet the requirements of section 501(c)(27)(A)(ii) of the Code.

Even though your sole purpose is not to make a profit, and the information furnished reflects that your trust indenture authorizes you to return excess contributions to your members, we conclude that there is not sufficient information to establish whether or not you meet the requirements of section 501(c)(27)(A)(iii) of the Code.

Section 501(c)(27)(B):

Even though you were established pursuant to [REDACTED] you were not established by State law in the same way [REDACTED]. Accordingly, we conclude that you do not meet the requirements of section 501(c)(27)(B)(i) of the Code.

Because you were formed to provide workers compensation only to members in good standing of [REDACTED], which is a membership organization composed of general contractors, subcontractors, suppliers, and related industries; and because participation in your group trust is not open to all employers in [REDACTED], we conclude that you do not meet the requirements of section 501(c)(27)(B)(ii) of the Code.

Because the [REDACTED] did not provide your initial operating capital, and because there is no evidence that the [REDACTED] extended its full faith and credit to your initial debt, we conclude that you do not meet the requirements of section 501(c)(27)(B)(iii)(I) of the Code.

Because your assets do not revert to the [REDACTED] on dissolution, we conclude that you do not meet the requirements of section 501(c)(27)(B)(iii)(II) of the Code.

Because none of the members of your board of directors, much less a majority of your governing board, are appointed by an official of the executive branch of [REDACTED], or by [REDACTED] or both, we conclude that you do not meet the requirements of section 501(c)(27)(B)(iv) of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days of the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

[REDACTED]

[REDACTED]